

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)	
Revision of the Commission's Rules To Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency Calling)	
Systems)	
)	
El Dorado Cellular, a California Corporation)	FCC 00-436
d/b/a Mountain Cellular)	
For Waiver of Section 20.18(c) of the Commission's Rules)	

To: The Wireless Telecommunications Bureau

EL DORADO CELLULAR, A CALIFORNIA CORPORATION
d/b/a MOUNTAIN CELLULAR
PETITION FOR WAIVER OF THE DEADLINE ESTABLISHED IN THE FOURTH
REPORT AND ORDER

El Dorado Cellular, a California Corporation d/b/a Mountain Cellular ("Mountain Cellular"), by its attorneys, pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. §1.3, hereby requests a waiver of the deadline in the *Fourth Report and Order*¹ in the above-captioned proceeding, with respect to the December 31, 2001 deadline for carriers operating digital systems to have obtained all software upgrades and equipment necessary to make their systems capable of transmitting 911 calls from TTY devices.

¹ In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Report and Order*, CC Docket No. 94-102, 15 Fcc Rcd 25216, 65 Fed. Reg. 82293 (December 28, 2000), ("*Fourth Report and Order*").

I. BACKGROUND AND INTRODUCTION

In the *Fourth Report and Order* the Commission established December 31, 2001² as the deadline for carriers operating digital wireless systems to obtain all software upgrades and equipment necessary to make their systems capable of transmitting 911 calls from TTY devices. It further established June 30, 2002 as the deadline for carriers to integrate, test and deploy the technology in their systems in conjunction with the public safety community.

To date, Mountain Cellular has not yet begun to provide digital CMRS services. Accordingly, Mountain Cellular has not been subject to the quarterly reporting requirements set forth in the *Fourth Report and Order* in CC Docket No. 94-102. However, Mountain Cellular plans to make its new CDMA network operational during the first quarter of 2002, barring any technical difficulties. It further plans to keep the Commission informed as to its status on meeting these deadlines and the status of the various technological solutions aimed toward attaining that goal. As detailed below, compliance with the present December 31, 2001 deadline may be unattainable, but Mountain Cellular intends to meet the the June 30, 2002 service date. Moreover, as Mountain Cellular will show below, waiving the December 31, 2001 deadline will not frustrate the Commission's intent in setting that interim deadline on the way to ensuring TTY E911 access over digital networks. Accordingly, Mountain Cellular herein seeks a waiver of that deadline.

^{2/} The December 31, 2001 deadline applies to wireless carriers providing digital service. Therefore, impliedly, the deadline to obtain all software upgrades and equipment necessary to make their systems capable of transmitting 911 calls from TTY devices is December 31, 2001 or the date a carrier begins to provide digital wireless service, whichever is later.

Mountain Cellular provides analog-based service and is in the process of deploying CDMA-based cellular service in California RSA 11, Market No. 346 (B) (El Dorado), which comprises El Dorado County near the El Dorado National Forest in the Sierra Nevada Mountains in California.³ Upon launching its CDMA network (scheduled for first quarter 2002), Mountain Cellular intends to comply with the requirements of 20.18(c) of the rules, to provide hearing-impaired persons with TTY access via the 911 dialing code over its digital wireless network by the June 30, 2002 deadline. However, the TTY-enabling software may not be installed by Motorola, Inc. (its switch vendor) immediately upon deployment. Mountain Cellular understands that the CDMA equipment it is installing either is or can be readily upgraded to permit TTY access to 911 services. Therefore, in the event that there is a delay between the date of deployment and the date that Mountain Cellular has obtained all software upgrades and equipment necessary to make its system capable of transmitting 911 calls from TTY devices, it requests the limited waiver described herein.

II. DISCUSSION

A. Basis For a Waiver of the December 31, 2001 Deadline

^{3/} Mountain Cellular provides cellular service under Call Sign KNKN220.

The Commission may grant a waiver for “good cause shown,” if the waiver is deemed in the public interest, or if there are unique factual circumstances that render application of the rule inequitable or particularly burdensome.⁴ Citing *WAIT Radio*, the Commission has stated that it may waive a rule “where waivers are founded upon an ‘appropriate general standard,’ ‘show special circumstances warranting a deviation from the general rule’ and ‘such deviation will serve the public interest.’”⁵ As shown below, the instant petition complies with all the waiver standards articulated in the above-cited rules and decisional precedent.

Mountain Cellular has worked diligently to upgrade its network to digital in order to better serve its subscribers and the public interest. As mentioned above, while Mountain Cellular has not yet begun offering CDMA digital service on its network, barring any technical difficulties it plans to do so during the first quarter of 2002. However, at the time of its CDMA deployment, the TTY compatibility-required upgrades may not be initially included in the Motorola network equipment. Moreover, as of this date, Mountain Cellular has not had access to any TTY-compatible CDMA handsets to enable it to commence testing, even if the requisite software were available and installed.

^{4/} 47 C.F.R. §§ 1.3, 1.925; *Northeast Cellular Telephone Co v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *cert. denied*, 409 U.S. 1027 (1972).

^{5/} “Wireless Telecommunications Bureau Outlines Guidelines For Wireless E911 Rule Waivers For Handset-Based Approaches To Phase II Automatic Location Identification Requirements,” DA 98-2631, released December 24, 1998 at page 4.

Indeed, Mountain Cellular does not believe that it will be able to obtain a CDMA TTY-compatible handset anytime in advance of its planned deployment of its CDMA network. Accordingly, even if the requisite software were purchased, no testing could occur at the time of CDMA deployment.

While Mountain Cellular may be unable to obtain the necessary software and equipment by the time it deploys its CDMA network, Mountain Cellular is committed to obtaining the feature-specific CDMA TTY-compatibility upgrade for 2002. Mountain Cellular plans to have these upgrades fully operational in time to allow for testing and implementation of the TTY-compatible software, and in time to meet the June 30, 2002 deadline proscribed in Section 20.18(c) of the Commission's rules.⁶

The purpose of instituting the December 31, 2001 deadline was to allow carriers time for testing before the June 2002 service offering deadline. While the unavailability of a TTY-compatible CDMA handset would render that testing impossible even if the software could be obtained in a timely manner, Mountain Cellular respectfully submits that the TTY digital compatibility requirement, unlike the E911 Phase II location requirement which has market-specific accuracy issues, is a function of compatible network hardware, software and handsets. If a particular configuration works in one deployment for a particular vendor's infrastructure, it should work equally well in any other deployment. This is a compatibility requirement; the network is either compatible or not and Mountain Cellular understands that testing is already underway by Motorola. Significantly, if a software problem is found in another Motorola deployment, Motorola understands

^{6/} Of course, Mountain Cellular's ability to conduct testing will be contingent on its ability to obtain a TTY-compatible CDMA phone in sufficient time to allow it to do so. However, even if the handset is not available, Mountain Cellular plans to proceed with the loading of the feature-specific software for CDMA TTY-compatibility by the June 30, 2002 deadline.

that the same software “fix” simply would be deployed in all Motorola systems operating that feature. Accordingly, a delay in Mountain Cellular’s deployment of the requisite software should not frustrate the purpose underlying the rule.

B. Scope of Waiver Requested

Mountain Cellular respectfully requests a waiver of the December 31, 2001 software deadline in its entirety. Mountain Cellular will proceed to upgrade its CDMA network once it is deployed and to implement TTY-compatibility CDMA feature software in time to meet the June 30, 2002 deadline. Mountain Cellular therefore intends to be in full compliance with Section 20.18(c) of the Commission’s rules by June 30, 2002.

C. Grant of the Instant Waiver Requests Will Serve the Public Interest.

As discussed above, waiver of the December 31, 2001 deadline will in no way delay ultimate implementation of TTY access to 911 services in June 2002. Therefore, waiver of the December 31, 2001 deadline will not harm the public interest. Given the unavailability of TTY-compatible CDMA handsets in advance of the intended CDMA deployment date, Mountain Cellular submits that it would not be able to initiate testing immediately upon CDMA deployment in any event. Accordingly, Mountain Cellular respectfully submits that the public service would best be served by allowing Mountain Cellular to proceed with its CDMA deployment without immediate acquisition of the equipment and software associated with providing TTY access to 911 services via its digital network. With the unavailability of CDMA TTY-compatible handsets, immediate acquisition would not expedite any interim testing; which testing is the only purpose of requiring advanced deployment of system hardware and software upgrades by the December 31, 2001 deadline.

Mountain Cellular will begin to provide the Commission with quarterly updates on the status of TTY-digital capability development and deployment, as advised by Mountain Cellular's infrastructure and handset vendors. Thus, the public interest also will be served by continued full disclosure of progress made in this matter. As such Mountain Cellular urges that a Commission grant of this request for a waiver of the December 31, 2001 deadline for obtaining the software upgrades and equipment necessary to make its system capable of transmitting 911 calls from TTY devices is in the public interest.

III. CONCLUSION

The foregoing demonstrates and explains the special circumstances that satisfy the general requirements to waive a Commission rule. Accordingly, Mountain Cellular respectfully submits that good cause has been shown for the limited waiver sought herein..

Respectfully Submitted,

El Dorado Cellular, a California Corporation
d/b/a Mountain Cellular

By: /s/ Lisa L. Leibow

Michael K. Kurtis

Lisa L. Leibow

Its Attorneys

Kurtis & Associates, P.C.
1000 Potomac Street, N.W.
Suite 200
Washington, D.C. 20007
(202) 328-4500

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